

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MICHAEL SCHIEDA,

Defendant-Appellee.

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UNPUBLISHED

October 30, 2003

No. 241665

Wayne Circuit Court

LC No. 02-003192

Before: Fitzgerald, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

The prosecution appeals as of right from the circuit court's order quashing the information charging defendant with second-degree child abuse, MCL 750.136b(3). We affirm.

I. Facts and Procedure

On June 12, 2002, defendant's teenage son, along with several other boys, were at defendant's home while defendant was not there. Defendant was not aware that the boys were at the house. Defendant's son shot one of the boys in the leg with a gun defendant kept loaded and in a drawer underneath the couch.<sup>1</sup> Defendant was charged with second-degree child abuse for causing physical harm to the child who was shot, "by leaving a loaded firearm in a common area of the house contrary to MCL 750.136b(3)." The above referenced statute provides, in pertinent part, that a person is guilty of second-degree child abuse if "the person's omission causes serious physical harm or mental harm to a child or if the person's reckless act causes serious physical harm to a child." MCL 750.136b(3)(a).

Significantly, the statute defines "person" as someone "who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person." MCL 750.136b(1)(d). At the preliminary examination, defendant moved for dismissal of the charge on the ground that the prosecution had failed to establish that defendant was a "person" as defined under the statute. The defendant argued that there was no evidence presented at the preliminary examination that defendant had

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<sup>1</sup> Although there was an altercation between some of the boys, it appears that the discharge of the gun was accidental.

ever exercised any control or authority over the injured boy, as required to satisfy the definition of “person” defined by the above mentioned statute. The district court denied the motion and defendant was bound over for trial. At the circuit court, defendant again moved to dismiss the charge. The circuit court granted defendant’s motion and dismissed the charge, concluding that the district court had abused its discretion because there was no evidence given during the preliminary examination that defendant had care over, custody of, or authority over the injured boy at the time of the shooting. Thus, defendant was not a “person” as defined by the statute. This appeal followed.

## II. Analysis

Like the circuit court, we review a district court’s decision to bind over a defendant for an abuse of discretion. *People v Hudson*, 241 Mich App 268, 276; 615 NW2d 784, 789 (2000).

A circuit court’s decision with respect to a motion to quash a bindover order is not entitled to deference because this Court applies the same standard of review to this issue as the circuit court. This Court therefore essentially sits in the same position as the circuit court when determining whether the district court abused its discretion. In other words, this Court reviews the circuit court’s decision regarding the motion to quash a bindover only to the extent that it is consistent with the district court’s exercise of discretion. The circuit court may only affirm a proper exercise of discretion and reverse an abuse of that discretion. Thus, in simple terms, we review the district court’s original exercise of discretion. [*Id.* (citations omitted).]

The purpose of a preliminary examination is to determine whether there is probable cause to believe that a crime was committed and whether there is probable cause to believe that the defendant committed it. MCL 766.13; MCR 6.110(E). In order to establish that a crime has been committed, the prosecution must provide some evidence to satisfy each element of the crime alleged. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003).

Here, the prosecution argues that the trial court erred when it determined that defendant was not a “person” as defined within MCL 750.136b(1)(d). The prosecution, citing *People v Jones*, 190 Mich App 509, 512; 476 NW2d 646 (1981), contends that in interpreting statutes, this Court should look outside the plain text and should determine and apply the intention of the Legislature by considering the object and purpose sought to be accomplished.<sup>2</sup> The prosecution

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<sup>2</sup> Preliminarily, we note that the prosecution has, in dozens of briefs before this Court and our Supreme Court, advocated that the legislative intent of the Michigan Penal Code must be derived by giving plain and ordinary meaning to the text of the statutory provisions under review. Such a position is not surprising, given the numerous directives from our Supreme Court consistent with this approach. See *People v Chavis*, 468 Mich 84, 92; 658 NW2d 469 (2003), and *People v Davis*, 468 Mich 77, 79; 658 NW2d 800 (2003) (both involving the Wayne County Prosecutor). What is surprising is that the prosecution asks us to adopt a method of statutory interpretation that flies in the face of established Supreme Court precedent. While we recognize the duty of an attorney to advocate zealously on behalf of their clients, we nonetheless conclude that the position taken by the prosecution in this case is, at best, disingenuous. The interests of justice  
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maintains that, if this Court goes beyond the plain language of the statute, defendant will be found to satisfy the elements needed to properly charge him with second-degree child abuse.<sup>3</sup> Defendant responds that the statutory language in question is unambiguous and, under the express definition of “person” found in 750.136b(1)(d), he cannot be found to have been in custody of, cared for, or had the authority over the child injured by his gun.

All provisions of the Penal Code are construed according to the fair import of their terms. MCL 750.2; MSA 28.192; *People v Armstrong*, 212 Mich App 121, 127; 536 NW2d 789 (1995). Furthermore,

[s]tatutory construction begins by examining the plain language of the statute to discern and give effect to the Legislature’s intent. *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999). If the language is unambiguous, no further construction is required or permitted, and the statute must be enforced as written. *Id.* at 330. This Court may look outside the statute to ascertain the Legislature’s intent only where the language is ambiguous. *Id.* [*People v Rutledge*, 250 Mich App 1, 5; 645 NW2d 233 (2002).]

Where a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined. *Harder v Harder*, 176 Mich App 589, 591; 440 NW2d 491 (1989). When reading the definition of the term “person” as provided by the Legislature in MCL 750.136b(1)(d), and giving the expressed meaning to those words chosen by the legislators in defining that word, it is clear that the Legislature intended that a “person” subject to culpability under the act must be someone who has exercised authority or control over the child alleged to have been subject to abuse at the time the abuse is alleged to have occurred.

In the present case, there was no evidence presented during the preliminary examination that, at any time relevant to the proceedings, defendant had custody of, or authority over the boy who was shot. Without such testimony, there is no establishment that defendant was a “person” subject to culpability under this criminal statute. This lack of evidence concerning a crucial element of the crime charged is fatal to the prosecution’s case.

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are obviously not served where, as here, a defendant is prosecuted for conduct that clearly is not proscribed by the statute he is alleged to have violated.

<sup>3</sup> The prosecution relies on *People v Flowers*, 222 Mich App 732, 735; 565 NW2d 12 (1997), and *People v Todd*, 196 Mich App 357; 492 NW2d 521 (1997), vacated 441 Mich 922 (1993), to argue that the purpose of the statute in question is to protect children from the excesses of an adult to whom authority or care the children have been subordinated. We first point out that this Court’s opinion in *Todd*, *supra*, was vacated by our Supreme Court. *People v Todd*, 441 Mich 922; 497 NW2d 188 (1993), on remand 201 Mich App 216 (1993), mod and remanded 444 Mich 927 (1994). Thus, this opinion lacks precedential value and the prosecution erroneously relied on it. Furthermore, even if we were to accept the prosecution’s claim that we are free to ignore the express language of a statute, something we are clearly without authority to do, the prosecution’s claim would remain without merit. There is simply no evidence that the teenage boys present at defendant’s home were under defendant’s authority or care.

Thus, we agree with the circuit court that there was no evidence presented at the preliminary examination that defendant is a “person” as defined in MCL 750.136b(1)(d). The district court abused its discretion when it decided to bind defendant over for trial.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Brian K. Zahra  
/s/ Karen M. Fort Hood